

RMA compliance, monitoring and enforcement framework



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1. RMA compliance, monitoring and enforcement (CME) functions

Northland Regional Council (NRC) is responsible under the Resource Management Act 1991 (RMA) for the control of activities that use natural resources which may cause adverse environmental effects. Council also has statutory obligations to implement and enforce other legislative instruments which are subsidiaries of the RMA. This includes the following National Environmental Standards (NES) and regulations:

- NES – Air Quality
- NES – Freshwater
- NES – Commercial Forestry
- NES – Storing tyres outdoors
- Measurement and Reporting of Water Takes Regulations
- Stock Exclusion Regulations

Resource consents are issued for those activities that do not meet the permitted activity criteria in the RMA, Proposed Regional Plan (PRP) or in a relevant NES or other national regulation. Section 35 of the RMA requires council to monitor the resource consents that it issues.

When resource consents are issued, conditions are set to control/limit the impact of an activity on the environment to an acceptable level and to meet council's objectives as set out in the Regional Policy Statement and PRP. Similarly, permitted activity criteria (in the PRP, NESs and other regulations) stipulate the minimum standards required for an activity to be carried out "as of right" (without needing a resource consent). Council's Environmental Monitoring Officers are responsible for assessing and enforcing compliance with consent conditions, permitted activity rules and NES/regulation criteria.

This framework sets out the NRC's operational approach to fulfil its RMA CME functions.

2. Environmental and other outcomes

Monitoring of activities which affect natural resources contributes to council's strategic direction to "*Nurture the environment, bring people together – Tiakina te taiao, tui ate here tangata*". It also helps to ensure that adverse environmental effects of those activities are avoided, remedied or mitigated (as required by section 17 of the RMA).

The primary purposes of compliance monitoring are to:

- Check that consent holders are meeting the conditions of their consents;
- Check that unconsented activities being undertaken, meet the permitted activity requirements in the PRP, NESs and other regulations;
- Check on the predicted environmental effects of activities;
- Assist in assessing the effectiveness of regional policy and plan provisions;
- Encourage, and where necessary enforce, behaviours which enhance environmental outcomes; and
- Ensure that the Northland Regional Council meets its obligations under the RMA (and its subsidiary legislation) to monitor and enforce compliance.

Performance measures specific to CME in the Long Term Plan 2024-2034 are:

Level of service	Why it is important	Performance measure	Performance target
Timely and effective compliance monitoring of resource consents, and response to reported environmental incidents.	The community expects that consent conditions will be met so that the environment is protected.	Percentage of consents that are monitored as per the council's consent monitoring programme.	90% or more
	To ensure timely and appropriate response to environmental incidents.	Percentage of incidents reported to the Environmental Hotline - (0800) 504 639 - resolved within 30 working days.	80% or more
	The community expects that NRC will hold consent holders to account when they are not complying with consent conditions.	Percentage of significant non-compliant graded events that have enforcement action taken.	100%

3. Associated documents

This framework is intended to operate in conjunction with these documents:

- NRC's Compliance, Monitoring and Enforcement Strategy
- Regional Sector (CESIG) Strategic Compliance Framework 2019-2024
- Ministry for the Environment's (MfE's) Best Practice Guidelines for Compliance, Monitoring and Enforcement under the Resource Management Act 1991 (2018)

Specific processes/procedures for NRC's CME staff are documented in council's "Process Manager" business system.

4. Compliance approach

Council recognises that effective regulatory monitoring requires a balanced approach that incorporates a variety of methods and interventions including:

- Proactive prevention (education);
- Detection and early intervention, and
- Enforcement.

Routine monitoring sits at the detection and early intervention stage and is a key element in achieving a regional culture of proactive compliance. Where appropriate, we will assist those we regulate to understand and meet their legislative obligations and we will drive compliance through transparent, consistent and accountable regulatory actions.

Assisting regulatory compliance will include providing online and hardcopy educational material, training workshops, media releases and providing face-to-face general guidance to regulated parties. However, CME staff will not instruct regulated parties on the specifics of the works required to achieve compliance as this can compromise further enforcement action if required. More effort on education is

likely to be required where new regulatory requirements come into effect and are starting to be implemented.

Council will also work collaboratively with other agencies and stakeholder groups to improve environmental outcomes and maximise compliance. This includes participation in community and industry liaison activities and development of specific targeted training/guidelines for certain industry sectors.

Council will apply a responsive and risk-based approach to its monitoring functions. This means it will focus on those activities which pose greater risk to the environment and human health. Our response will be proportionate to the environmental risk and will take into account the attitude/behaviour and response of those who are non-compliant. While we will always aim to be consistent, we will also exercise our discretion for the individual circumstances.

Council will check compliance with the resource consents which are considered to have more than minor actual or potential adverse effects by inspecting the consented activities at least annually where those activities are ongoing. For those consents issued for one-off activities (e.g. site development or construction earthworks), monitoring will be undertaken when the activities are being undertaken, at a frequency commensurate to their scale and potential effects. For example, larger scale earthworks in more sensitive environments will be monitored more frequently than smaller scale earthworks in a less sensitive environment.

Compliance inspections will typically be undertaken without prior notification (unannounced) in accordance with the Ministry for the Environment (2018) *“Best Practice Guidelines for Compliance Monitoring and Enforcement under the Resource Management Act 1991”* and the directive of the Controller and Auditor General who stated *“We consider that unannounced visits should be the default option for all councils”*¹¹. The exceptions to this are where there are recognised health and safety risks associated with undertaking monitoring inspections. For example, inspections of larger scale forestry harvesting operations that can only be accessed via forestry tracks being used by logging trucks.

Compliance monitoring will generally be undertaken in accordance with specific set work programmes. This may change where staff resources are under pressure and/or need to be redirected to higher priority CME work. Pre-scheduled monitoring inspections may be deferred for health and safety reasons in response to weather warnings. Inspections are likely to be deferred for longer periods after severe weather events, particularly where there has been damage and/or prolonged inundation to infrastructure associated with the activity being monitored.

We will use formal enforcement tools when there is evidence of more than minor non-compliance, especially where there is systemic or repetitive non-compliance (see Section 10 Enforcement options).

5. Compliance staff code of conduct

It is expected that monitoring/enforcement officers will always:

- Act professionally;
- Act lawfully;
- Be fair and reasonable;
- Act in good faith (that is, without malice or bias); and
- Keep accurate records of actions taken in the exercise of their duties.

¹ Controller and Auditor General (2019): *Managing freshwater quality: Challenges and opportunities*
RMA Compliance, Monitoring and Enforcement Framework

These behaviours and principles will be applied during all aspects of compliance monitoring, including when determining the frequency of monitoring and when assessing compliance.

It is also expected that compliance staff will conduct their monitoring in an organised, efficient and effective manner to cut down on unnecessary costs to consent holders and ensure timely environmental outcomes.

Our goals for compliance monitoring staff are that:

- ***We achieve the desired environmental outcomes in a professional, timely, efficient and effective manner; and***
- ***We treat people with respect, and we are respected.***

6. Conflict of interest

From time to time, council will be in a position where an actual or perceived conflict of interest associated with compliance monitoring exists. All staff are personally responsible for declaring any conflicts of interest for compliance monitoring activities. This will be discussed with their manager, and where appropriate the consent/activity/incident will be re-assigned to another monitoring officer. In some circumstances it may be appropriate for NRC to request the support of an independent party (including the EPA) which may include providing advice; undertaking any investigation; making recommendations on potential enforcement action; or reviewing an investigation. The decision to request independent support for an investigation is made by the Group Manager – Regulatory Services or the Compliance Monitoring Manager. Where NRC may be involved in potential significant non-compliance, independent support will be sought. Circumstances where a conflict or perceived conflict is likely to exist include:

- Consents or activities which are being undertaken by a friend/relative or other person closely known to the monitoring officer.
- Consents issued to NRC for which the monitoring officer has some involvement in managing (e.g. river/flood protection works). Where appropriate, council will use an independent contractor to monitor its own consents.
- Any circumstance which means that the monitoring officer/team may not be impartial.

7. Managing unreasonable conduct and repeat or vexatious complaints

At times, complainants can behave in ways that are inappropriate and abusive towards our staff, overload us with excessive phone calls and/or emails, make inappropriate demands on staff time/resources and refuse to accept staff decisions regarding their complaints. Such behaviour will be considered unreasonable conduct, which can be divided into five categories of conduct:²

- Unreasonable persistence;
- Unreasonable demands;
- Unreasonable lack of cooperation;
- Unreasonable arguments, and
- Unreasonable behaviours.

² Privacy Commissioner (2024): *Managing Unreasonable Conduct*

The Group Manager Regulatory Services or Compliance Monitoring Manager may make the decision to not respond further (or stop responding) to a particular complainant who continues to behave unreasonably. They may also stop responding to repeat or vexatious complaints in circumstances which include:

- Where the complaint is about a trivial or minor matter.
- Where the complaint is essentially a dispute between neighbours and/or there are civil remedies open to the parties.
- Where the complaint is about phenomena that are alleged to be caused by activities that have been scientifically debunked and can readily be explained by proven human or natural causes.
- Where the complaint has already been investigated and an appropriate response made, and no new information is being provided to change that response.
- Where there are health and safety concerns for NRC staff or anyone working on behalf of NRC.
- Where a person has complained to the Ombudsman and the Ombudsman has chosen not to take the matter further after their enquiries.
- Where it has been established that NRC does not have jurisdiction in the matter.

8. Enforcement principles

The aim of our enforcement action is to compel compliance.

The principles behind NRC enforcement action are:

- Our enforcement action is consistent for similar activities and circumstances;
- Our enforcement action reflects the letter and intent of the Resource Management Act 1991;
- We use informal enforcement mechanisms, such as, education, consultation and negotiation where appropriate;
- Our enforcement action is fair and reasonable; and
- Our choice of enforcement action takes into account the individual circumstances of each case.

9. Enforcement options

Informal options include:

- Verbal warning

Formal enforcement options and requirements are set out in Part 12 of the RMA. These are:

- | | | |
|---|---|-----------|
| <ul style="list-style-type: none">• Abatement Notice• Water Shortage Direction• Interim Enforcement/Enforcement Order• Emergency Works Direction | } | Directive |
| <ul style="list-style-type: none">• Written warning• Infringement Notice• Prosecution | | |

Section 338 lists all the actions which are offences against the RMA. Where an offence has been committed, council can lay charges for a prosecution. Some of these offences are also *infringement offences* under section 343A-D. Infringement offences and their associated fees are set out in Schedule 1 of the Resource Management Regulations 1999. NRC does not set the level of fine.

10. Authority to take enforcement action – warrants of appointment

Section 38 of the RMA provides for authorisation of enforcement officers. Section 38(1) states that a local authority may authorise any of its officers to carry out all or any of the functions and powers as an enforcement officer under this Act. This applies to NRC staff and its contractors.

The Chief Executive Officer is responsible for authorising the powers delegated to individual enforcement officers to enable them to perform their duties. Those powers are recorded on the warrant issued to the enforcement officer.

The powers delegated to individual enforcement officers vary. In general, all Environmental Monitoring Officers in the Compliance Monitoring Department are delegated the powers provided by the following RMA sections:

22; 322; 325A, 332; 333 and 343C

These powers include powers of entry for inspection and powers to issue abatement and infringement notices.

Emergency Powers (section 330)

Powers under section 330 (power to invoke emergency works and to take preventative or remedial action) are held by Enforcement officers who are also in management positions.

Enforcement orders/interim enforcement orders

The power to make an application for an enforcement order to the Environment Court is delegated to the Group Manager – Regulatory Services, Group Manager – Environmental Services, Regional Harbourmaster, Deputy Harbourmaster and Compliance Monitoring Manager.

Prosecution

The power to (lay charges to) prosecute is delegated to the Group Manager – Regulatory Services, Compliance Monitoring Manager and Regional Harbourmaster.

11. The decision to take enforcement action

It is our intention that all decisions on formal enforcement action will be made robustly, fairly and consistently. Decisions will be based on facts, not assumptions or guesses.

Specific to the RMA, the criteria below are considered (taken from the MfE Best Practice Guidelines for Compliance, Monitoring and Enforcement under the Resource Management Act 1991):

1. Actual adverse effects (effects that have occurred).
2. Likely adverse effects (potential effects).
3. Value or sensitivity of area affected.
4. Deliberate or accidental action.
5. Degree of due care taken/foreseeability of incident.
6. Effort to remedy/mitigate effects.
7. Effectiveness of remedy/mitigation.
8. Profit or benefit gained by alleged offender.
9. Repeat non-compliance and/or previous enforcement action for the same or similar situation.
10. Failure to act on prior instructions, advice or notice.
11. Degree of deterrence required in relation to the party (that is specific deterrence and not a wider deterrent effect).
12. Degree of general deterrence required.

Not all of these factors will be applicable in every case.

We will also abide by the Prosecution Guidelines provided by the Solicitor-General (Crown Law office³). The key areas for consideration from the guidelines are:

- The independence of the decision-maker (i.e. from undue or improper pressure from any source, political or otherwise).
- The decision to prosecute
 - The test for prosecution
 - The evidential test
 - The public interest test
- Reasons for decisions
- The choice of charges
- Review of charges
- Co-ordination of prosecution decisions (between government agencies)
- Disclosure

Abatement and Infringement Notices

An officer with delegated authority to issue an abatement notice can do so provided it has been reviewed by the Enforcement Specialist or a Compliance manager before being issued. Before an infringement notice is issued by a duly delegated officer, at the minimum, the officer will discuss this with a Compliance manager and/or the Enforcement Specialist. A formal enforcement decision group meeting is not mandatory before abatement or infringement notices are issued.

Prosecutions and Enforcement Officers

The initial decision to pursue a prosecution or apply for an enforcement order will be made by an enforcement decision group (EDG). The investigating officer(s) seeking such a decision provide(s) information to the EDG and answer questions but do not decide on what action is taken. The composition of the group can change depending on the nature of the offence, but at a minimum, will include at least two of the following:

- Monitoring Manager
- Compliance Monitoring Manager
- Enforcement Specialist

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Solicitor-General's Prosecution Guidelines: www.crownlaw.govt.nz/assets/Uploads/Prosecution-Guidelines/ProsecutionGuidelines2013.pdf

- Group Manager – Regulatory Services

If an EDG decides that a prosecution and/or enforcement order is the desired course of action, then the case will be checked by council's RMA enforcement lawyer to determine if it meets the evidential and public interest tests (or if there is any other reason why the case should not proceed). If our lawyer advises that the case is sound and can proceed, then charging documents are prepared and provided to the Group Manager – Regulatory Services or the Compliance Monitoring Manager for authorisation.

12. Transfer of a case to the EPA

Section 343F provides for the Environmental Protection Authority (EPA) to take enforcement action under the RMA and how/when it will become involved. NRC will at times notify the EPA of an incident in our region. This may happen when:

- We have a conflict of interest; or
- We have insufficient resources to properly investigate an incident and take enforcement action (e.g. when enforcement staff are already heavily committed to other enforcement action).

13. The decision to cancel/withdraw enforcement actions

The RMA has specific provisions for the cancellation or withdrawal of enforcement actions. Individual officers do not have the authority to make the decision, in isolation, to cancel or withdraw abatement or infringement notices. The decision will be made in consultation with one of the Compliance Monitoring Managers and the Enforcement Specialist.

Note: Once charges have been laid for a prosecution, council must seek leave of the court to withdraw charges.

14. Other relevant legislation

Aside from the Resource Management Act 1991, when undertaking enforcement action, council are also bound by other legislation, specifically the:

- Criminal Procedure Act 2011;
- Search and Surveillance Act 2012; and
- Criminal Disclosure Act 2008.

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